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No. 93-3089

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1993

WILLIAM B. RICHARDSON,

Petitioner,

vs.

UNITED STATES, DEPARTMENT OF HEALTH and HUMAN SERVICES, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS KEYSTONE PEER REVIEW ORGANIZATION, CARMEN J. STRIANO AND PAT ELEY

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QUESTION PRESENTED FOR REVIEW

Whether Petitioner has demonstrated special and important reasons sufficient to justify review of this case on writ of certiorari.

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Table of Contents	ii
Table of Citations	ii
Statement of the Case	1
Summary of Argument	1
Reasons for Denying the Writ	2
I. No special and important reasons exist which would warrant the Court's review on a writ of certiorari.	2
Conclusion	4

TABLE OF CITATIONS

Cases Cited:

Maddox v. Shroyer, 302 F.2d 903 (D.C. Cir.), *cert. denied,* 371 U.S. 825, 83 S. Ct. 45, 9 L. Ed. 2d 64 (1962)	2, 3
Rakonick v. Hamilton-Brown Shoe Co., 103 F.2d 553, *cert. denied,* 308 U.S. 588, 60 S. Ct. 111, 84 L. Ed. 492 (1939)	3

Rules Cited:

Federal Rules of Civil Procedure, Rule 12(b)(5)	3
Rules of the Supreme Court, Rule 10	1, 2, 3

STATEMENT OF THE CASE

Petitioner William B. Richardson (hereinafter "Richardson") initiated this action by the filing of a *pro se* complaint with the United States District Court for the Western District of Pennsylvania on January 11, 1991, which was followed by an amended complaint on May 28, 1991. All defendants in those actions filed motions to dismiss. On September 19, 1991, the District Court ordered Richardson to file a further amended complaint conforming to an outline provided by the court headed "Directions for Filing Amended Complaint." Richardson then filed a second amended complaint on October 1, 1991, which was followed by motions to dismiss from all defendants.

On November 18, 1991, the United States Magistrate for the District Court filed a report, concluding that Richardson's complaint, as amended, should be dismissed. Appendix, A-1 to A-5. On December 16, 1991, the District Court, by Judge Bloch, entered an order dismissing Richardson's amended complaint and adopting the Magistrate's report as the opinion of the court. Appendix, A-6 to A-7.

Richardson appealed the dismissal to the United States Court of Appeals for the Third Circuit. The Court of Appeals affirmed the judgment of the District Court on April 26, 1993. Appendix, A-35. The present petition for writ of certiorari followed.

SUMMARY OF ARGUMENT

Petitioner Richardson has presented no "special and important reasons" why the petition for writ of certiorari should be granted, as is required by Rule 10 of the Rules of the Supreme Court of the United States. Richardson has not identified, and there do not exist, any conflicting decisions of any other United States Court of Appeals on the same matter. Similarly, there has been no

citation to any conflict on a federal question with a state court nor has there been any departure from accepted or usual judicial proceedings. Finally, Petitioner Richardson has not demonstrated that the decision of the Court of Appeals in this matter constitutes an important question of federal law which has not been but should be settled by this Court, and has not demonstrated any conflict between the Court of Appeals' decision and any other decision of this Court.

REASONS FOR DENYING THE WRIT

I.

NO SPECIAL AND IMPORTANT REASONS EXIST WHICH WOULD WARRANT THE COURT'S REVIEW ON A WRIT OF CERTIORARI.

As is pointed out in Rule 10 of the Rules of the Supreme Court of the United States, "a review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only when there are special and important reasons therefor."

The rule goes on to enumerate various considerations which, while not exhaustive, are indicative of the types of "special and important reasons" which would warrant review of a case on writ of certiorari. No such special or important reasons are cited by Petitioner, nor do any exist which would justify the Court's review of this matter.

To the contrary, the present case merely follows a well-established rule of law in permitting a District Court to exercise its discretion in dismissing a complaint which fails to set forth a claim upon which relief can be granted. *Maddox v. Shroyer,* 302 F.2d 903 (D.C. Cir.), *cert. denied*, 371 U.S. 825, 83 S. Ct. 45, 9 L. Ed. 2d 64

(1962); Federal Rules of Civil Procedure, Rule 12(b)(6). In the present case, the District Court permitted Richardson to file two amended complaints in special consideration to his circumstances as a *pro se* litigant. However, even provided with a detailed outline of elements to be set forth in a complaint, Richardson failed to set forth any coherent cause of action against any of the defendants. Rather, Richardson submitted a rambling diatribe alluding to various purported infringements of his constitutional rights but totally failing to assert any recognizable cause of action therein.

It is well established that the District Court, after permitting the *pro se* litigant every reasonable opportunity to set forth his claim, retains the discretion to dismiss the complaint if repeated attempts failed to cure its deficiencies. *Rakonick v. Hamilton-Brown Shoe Co.*, 103 F.2d 553, *cert. denied*, 308 U.S. 588, 60 S. Ct. 111, 84 L. Ed. 492 (1939).

There is nothing in the record to indicate that the District Court abused its discretion, or that the Third Circuit Court of Appeals erred in its decision to affirm the District Court. Petitioner has not advanced any substantial argument which would warrant review of this matter under the guidelines set forth in Rule 10. Accordingly, this Court should deny the petition for writ of certiorari.

CONCLUSION

For the reasons set forth herein, Respondents respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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